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BEFORE THE OKLAHOMA DEPARTMENT OF MINES
STATE OF OKLAHOMA

In Re: The Matter of the)
Application of:)
ARBUCKLE AGGREGATES, LLC, for a)
permit to engage in surface)
mining and reclamation) Case No. PAN-10-05-IC
operations in an area of 575) Permit #L.E.-2361
acres, more or less, located in) (Mill Creek Quarry)
Sections 23 and 24, Township 1)
South, Range 4 East, Johnston)
County, State of Oklahoma)

PUBLIC INFORMAL CONFERENCE HELD BY
THE OKLAHOMA DEPARTMENT OF MINES
IN TISHOMINGO, OKLAHOMA
ON OCTOBER 4, 2011

APPEARANCES

On behalf of Arbuckle Aggregates, LLC:

Elizabeth Nichols
Attorney at Law
1050 East Second Street, No. 251
Edmond, Oklahoma 73034

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1 (Proceedings began at 6:36 p.m.)

2 MR. SHOLAR: I'm going to open the
3 record by just, again, going through a few of the
4 rules we have. Everyone that's in attendance tonight,
5 we'd appreciate if you'd sign that white sign-in sheet
6 when you came in. This gives us a record of -- of who
7 was -- of who was here. If you are -- if you are
8 speaking tonight and you're an individual, I would
9 like for you to sign the pink sheet and if you are
10 speaking on behalf of a client or on behalf of a
11 group, then you will sign -- you will sign the yellow
12 sheet.

13 The individual speakers will be given three
14 minutes to talk and the representative will be
15 given -- given six minutes. We will -- we have a
16 timer up here and a clock that will help you keep --
17 keep you -- keep you on track. If you are speaking as
18 an individual, you may not speak as a representative.
19 And I'm also going to ask the representative, if they
20 will take a break in between the two, bring me a list
21 of who you are speaking for. So if you -- if you're
22 speaking for yourself, then you may not have somebody
23 speak for you later as -- as well.

24 Many of you all spoke at the first informal
25 conference on -- on December 2nd and obviously you are

1 allowed to speak again. But to make things in -- in
2 the interest of time, you may say the same thing
3 again, but you do not need to because what you said
4 the first time has already been recorded. There will
5 be no extra weight given to saying the same thing
6 twice by the same person; they've already been
7 recorded. But anything new you have to add, we'll
8 definitely take that -- take the same -- have the same
9 weight. So just in the interest of time, if you would
10 refrain from saying the same thing you said last time
11 because we already have that for -- on -- on the
12 record.

13 The way this is going to work is I'm going to
14 have the applicant -- applicants are going to speak
15 first and they're going to give -- they're going to
16 give their -- they're going to talk about -- about
17 their permit and then any questions or issues that
18 have been raised, then we will -- then I'll let the
19 individual speakers go and then the representative
20 speakers to go and then the -- then the applicant will
21 have another chance to answer any questions that
22 anybody might have.

23 If you have an exhibit tonight, we already
24 have 56 exhibits for this -- for this permit, for
25 this -- for this informal conference. Take them over

1 here to mister -- when -- when it's your turn to
2 speak, take them over here to Mr. Pue (sp) and he
3 will -- he will log them in. So just -- just do that
4 when -- when you come up and that's -- that way we
5 will have -- do that in an orderly fashion.

6 If you would, address the audience only from
7 the podium. That way we can record what you're
8 saying. We can pick it -- pick it up and everybody --
9 everybody can hear. I think last time we had this
10 conference, the -- the mics weren't that great. Looks
11 like they have a little bit better sound system this
12 time, so if you can address everyone from -- from the
13 podium, that -- that is what we need to do instead of
14 yelling stuff from -- from the audience.

15 Again, this informal conference is held under
16 the authority of Title 460:10-17-7 of the Oklahoma
17 Administrative Code and we're doing that according to
18 those rules. This not being a legal proceeding, I'm
19 just here to listen, to make recommendations to the
20 deputy director of the Department of Mines who will in
21 turn issue a notice of departmental decision. Only
22 those -- those qualified protestants and those who had
23 sent us in letters this -- this time and for the last
24 conference will you all receive a cop- -- if you've
25 signed in tonight and you are a qualified protester,

1 you will receive a copy of the notice of decision. If
2 you are not -- if you are not and you're also -- now,
3 we now publish our decisions in the -- in the paper,
4 local paper, so it will also be published -- it will
5 be published in the paper as well. And this one will
6 be in the Johnston County Capital-Democrat like --
7 like everything else has been.

8 What the -- basically what the decision will
9 say, it will say what -- what our -- our decision is
10 and it will also inform you if you wanted to ask for
11 administrative hearing, it will give you the time --
12 time frames for such.

13 Those are just some basic rules, what we're
14 going to talk about tonight and some issues, how this
15 will be addressed at a later date. All right.

16 Before the Oklahoma Department of Mines,
17 State of Oklahoma, in the matter of application of
18 Arbuckle Aggregates, LLC for a permit to engage in
19 surface mining and reclamation operations at area of
20 575 acres, more or less, located at Sections 23 and
21 24, Township 1 South, Range 4 East, Johnston County,
22 State of Oklahoma. This is Case No. PAN-10-05-IC2,
23 Permit No. LE-2361, the Mill Creek Quarry.

24 This is the second notice and order referring
25 and setting this informal conference to applicant for

1 a permit to engage in surface mining and reclamation
2 operations, Arbuckle Aggregates, LLC and to all proper
3 objectors who have filed a proper request under OAC
4 460:10-17-7 of the Oklahoma Department of Mines
5 Non-Coal Rules and Regulations to wit. And those
6 parties who are listed on the notice of mailing
7 attached -- attached to this will be or the qualified
8 protestants.

9 Notice is hereby given that an informal
10 conference PAN-10-05-IC is scheduled for the 4th day
11 of October 2011 for Bret Sholar, informal conference
12 officer, to be held in Fletcher Auditorium, Murray
13 State College, One Murray Campus, Tishomingo,
14 Oklahoma, to begin at the hour of 6:30 p.m. We have
15 received a number of exhibits from the first
16 conference and after the first conference, we left the
17 record open for -- through January 14th and received a
18 number of other exhibits and then I have some exhibits
19 that have been in regard to this conference.

20 Exhibits 1 through 36 were submitted into the
21 record at the December 2, 2010 informal conference and
22 Exhibits 33 through -- 37 through 50 I will -- I will
23 -- I'm going to read into the record.

24 Exhibit 37, letter dated December 16, 2010
25 from Bruce Noble, superintendent of the National Park

1 Service, Chickasaw National Recreation Area was
2 received by the Oklahoma Department of Mines on
3 December 20, 2010.

4 Exhibit 38, short summary of federal
5 insurance company Pacific indemnity company v. Rodman,
6 LLC, et al., Civil Action Case No. 310-CV-02042-B
7 filed October 8, 2010, submitted by Estate of Ida
8 Sutton Williams, received by ODM on January 10, 2011.

9 Exhibit 39, record of pending litigation
10 against the principals of Arbuckle Aggregates, LLC and
11 Federal Insurance Company and Pacific Indemnity
12 Company v. Rodman, LLC, et al., Civil Action No.
13 3:10-CV-02042-B, filed October 8, 2010, submitted by
14 estate of Ida Sutton Williams, received by ODM on
15 January 10, 2011.

16 Exhibit 40, pleadings filed as of December 1,
17 2010 in the case of Federal Insurance Company and
18 Pacific Indemnity Company v. Rodman, LLC, et al.,
19 Civil Action 3:10-CV-02042-B, filed October 8, 2010,
20 submitted by the estate of Ida Sutton Williams,
21 received by ODM on January 10, 2011.

22 Exhibit 41, article from the Journal of
23 British Industrial Medicine, "Disabling Pneumoconiosis
24 from Limestone Dust" by A.T. Doig, submitted by estate
25 of Ida Sutton Williams, received by ODM January 10,

1 2011.

2 Exhibit 42, revised copy of December 2, 2010
3 informal conference comments resolution adopted by
4 Tishomingo City Council and three aerial maps of the
5 Tishomingo and proposed mining site, six pages,
6 submitted by Lewis Parkhill, mayor of Tishomingo, via
7 e-mail on January 13, 2011.

8 Exhibit No. 43, letter dated January 12, 2011
9 containing supplemental information from Bruce Noble,
10 superintendent of the National Park Service, Chickasaw
11 National Recreation Area, received by ODM on January
12 13, 2011.

13 Exhibit 44, letter dated December 15, 2010
14 from the Oklahoma Department of Wildlife Conservation,
15 two pages, received by ODM on January 14, 2011.

16 Exhibit 45, comments on behalf of the United
17 States Fish and Wildlife Service and the United States
18 Department of the Interior, nine pages, received by
19 ODM on January 14, 2011.

20 Exhibit 46, entry of appearance for Alan R.
21 Woodcock, field solicitor for the Tulsa field office,
22 Office of the Solicitor, United States Department of
23 the Interior, four pages, received by ODM on January
24 14, 2011.

25 Exhibit 47, entry of appearance for Peter A.

1 Fahmy, water rights attorney for the Office of the
2 Solicitor, United States Department of the Interior,
3 three pages, received by ODM on January 14, 2011.

4 Exhibit 48, summary of January 14, 2011
5 application submittals and updates submitted by
6 Arbuckle Aggregates, LLC, Mill Creek Quarry, January
7 14, 2011.

8 Exhibit 49, updated permit maps, location
9 map, incremental bonding map, reclamation map, Section
10 23 non-coal location map, Section 24 non-coal location
11 map submitted by Arbuckle Aggregates, LLC, Mill Creek
12 Quarry, January 14, 2011.

13 Exhibit 50, outlined proposed monitoring
14 program which was 32 pages submitted by Arbuckle
15 Aggregates, LLC, Mill Creek Quarry, January 14, 2011.

16 I will make note that these -- what was
17 submitted here by Arbuckle Aggregates has become part
18 of their permit and if you went to the courthouse, the
19 updated permit is there and all these items have been
20 included as part of -- part of that -- of that
21 permit. We also have some exhibits that pertain to --
22 to this conference.

23 Exhibit 51, affidavit of publication for
24 legal notice of permit application in the Johnston
25 County Capital-Democrat on August 4th, August 11th,

1 August 18th, and August 25, 2011.

2 Exhibit 52, affidavit of publication for
3 second notice and order referring and setting informal
4 conference in the Johnston County Capital-Democrat on
5 September 22nd and September 29, 2011.

6 Exhibit 53, second notice and order referring
7 and setting the informal conference dated September
8 15, 2011.

9 Exhibit 54, notice of mailing dated September
10 16, 2011.

11 Exhibit 55, letter submitting an updated copy
12 of Arbuckle Aggregates, LLC Application No. LE-2361 to
13 Kathy Ross, county clerk, Johnston County, dated
14 August 1, 2011, time stamped 11:15 a.m.

15 Exhibit 56 are objection letters requesting
16 second informal conference.

17 56-A, Michael Givel (sp), ODM received August
18 18, 2011.

19 56-B, Don Pope, ODM received August 19,
20 2011.

21 56-C, Priscilla Stephens (sp), ODM received
22 August 19, 2011.

23 56-D, Wayne Kellogg, Chickasaw Nation, ODM
24 received August 19, 2011.

25 56-E, Wayne Wiley (sp), ODM received August

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1 17, 2011.

2 56-F, Roy David Mullins (sp), ODM received
3 August 23, 2011.

4 56-G, Lisa Phillips, Dunn's Fish Farm, ODM
5 received August 24, 2011.

6 56-H, Mary McLamore (sp), ODM received August
7 24, 2011.

8 Exhibit 56-I, Paul D. Young, ODM received
9 August 30, 2011.

10 56-J, Francis Morrell (sp), ODM received
11 September 7, 2011.

12 56-K, Lewis and Wanda Barbaro (sp), ODM
13 received September 7, 2011.

14 56-L, Kenneth R. Meyers, ODM received
15 September 1, 2011.

16 56-M, Jeff L. Hartman, ODM received September
17 1, 2011.

18 56-N, Gary Greeney (sp), Round Rock Ranch,
19 ODM received August 30, 2011.

20 56-O, Jan Frederick, ODM received September
21 8, 2011.

22 56-P, CPASA, care of the Aamodt Law Firm,
23 Jason B. Aamodt, ODM received September 8, 2011.

24 56-Q, Zeno McMillan, ODM received September
25 8, 2011.

1 56-R, Darrell Smith, ODM received September
2 8, 2011.

3 56-S, Lucas R. Pierce, ODM received September
4 8, 2011.

5 56-T, David L. Pierce, ODM received September
6 8, 2011.

7 56-U, Randy Fulliger (sp), ODM received
8 September 9, 2011, postmarked September 6, 2011.

9 56-V, Bruce D. Gibson, ODM received September
10 9, 2011, postmarked September 8, 2011.

11 Exhibit 56-W, Leonard S. Fulliger, ODM
12 received September 6, 2011, postmarked September 6,
13 2011. Okay.

14 All right. These -- these 23 names that I
15 read represent the qualified applicants from this
16 conference and then there were another -- I think we
17 have 307 on the mail list from the first one and they
18 all received -- they were also qualified applicant --
19 or protesters, I'm sorry, for the -- for the
20 conference. So if you're a qualified protester, then
21 you will receive a copy and if you sign in either one
22 of the conferences, you will receive a copy of a
23 notice of decision and everybody else, it will be
24 published -- the same thing will be published in -- in
25 the paper.

1 MR. NOBLE: Do you know when that might
2 happen?

3 MR. SHOLAR: We will get to it. You
4 know, we'd like to get this thing -- the decision made
5 as -- as soon as possible, but we are going to also
6 give it its due diligence and look at it, so hopefully
7 before too long. That's all I -- that's all I -- I
8 can't give you a date because I don't know.

9 AUDIENCE MEMBER: I have a question
10 about --

11 MR. SHOLAR: You'll have to wait till we
12 --

13 AUDIENCE MEMBER: This is about an
14 exhibit.

15 MR. SHOLAR: When it's your turn to
16 talk.

17 AUDIENCE MEMBER: I'm not speaking.

18 MR. SHOLAR: Okay. Well, then you'll
19 have -- what...

20 AUDIENCE MEMBER: That is about an
21 exhibit you just read. I -- I just had a question if
22 I heard you correctly. Exhibit 55, could you tell me
23 again what that is?

24 MR. SHOLAR: Exhibit 55 is a letter
25 submitting an updated copy of Arbuckle Aggregates, LLC

1 Application No. LE-2361 to Kathy Ross, county clerk of
2 Johnston County, dated August 1, 2011, time stamped
3 11:15 a.m. That's when we submitted the copy of the
4 application to the county clerk. That was available
5 for public view.

6 AUDIENCE MEMBER: Okay. It was not
7 submitted to all the parties of record?

8 MR. SHOLAR: No. They got -- no. They
9 just -- they -- they got a letter saying it was
10 available in the courthouse because it's a very big
11 document, so we do not -- we do not send it out to
12 everybody. They could request the document and -- and
13 they pay for the copy, but we do not send it out and
14 everything, but it is available in the courthouse.

15 AUDIENCE MEMBER: Was notice to given to
16 all the parties that there was a revised application?

17 MR. SHOLAR: Yes. All right.

18 Any more future questions, please, let's wait
19 till we get there. That way we can get it for the
20 court -- for the record. All right.

21 Again, I'm going to reiterate this: This is
22 not a legal proceeding and if -- if -- if anybody
23 tries to turn it into that, I'll quickly turn it the
24 other way because this an informal conference to hear
25 the public's view on this -- on this issue. It's not

1 a legal -- a legal forum.

2 After applicant gives their opening
3 statement, again, individuals will have three minutes
4 and the representatives will have six. And then,
5 again, applicants will have a chance for final
6 statement to answer those questions. And when you
7 speak, when it's your turn, please come up to the mic
8 and state your name and -- and address. And to
9 reiterate and I'll reiterate about sending out the
10 notice of decision at the end of the conference again
11 in case you didn't -- didn't get that.

12 But at this time, I'll ask Arbuckle
13 Aggregates to come up and -- and speak.

14 MS. WILLIAMS: Mr. Sholar, before you
15 begin with Arbuckle Aggregates, I would like to
16 object --

17 MR. SHOLAR: Ma'am --

18 MS. WILLIAMS: -- to this proceeding
19 because the notice you say has been given to all of
20 the protesters was not given in the notice.

21 MR. SHOLAR: Ms. Williams, do you mind
22 sitting down till it's your turn?

23 MS. WILLIAMS: I'm asking you --

24 MR. SHOLAR: Because this is not --

25 MS. WILLIAMS: -- at the outset to bring

1 this to your attention that the notice that I received
2 in the mail, you have just said that there was an
3 indication that there was a new application filed and
4 there is no indication in the notice that was sent to
5 us that any new application was filed and I wish --

6 MR. SHOLAR: You can bring this up --

7 MS. WILLIAMS: -- to indicate that --

8 MR. SHOLAR: -- when -- when it's your
9 time, ma'am. You're welcome -- we'll -- we'll -- we
10 can address that issue in your time to speak.

11 MS. NICHOLS: Good evening. Can
12 everyone hear me okay? In the back? No? Better
13 now? No. Better? Okay.

14 My name is Elizabeth Nichols and I am the
15 attorney for Arbuckle Aggregates. I am not going to
16 revisit all of the topics that we discussed at our --
17 at our previous informal conference. What I'm going
18 to provide you with is just an update of the things
19 that have changed since our last informal conference.

20 MR. SHOLAR: Give us your address,
21 please, for the record.

22 MS. NICHOLS: It is 1050 East 2nd
23 Street, No. 251, Edmond, Oklahoma, 73034.

24 Arbuckle Aggregates renews all of its
25 previous statements and responses made on the record

1 of the last informal conference. Arbuckle Aggregates
2 also objects to the CPASA supplemental brief in
3 opposition that was handed to me this evening which is
4 nine pages with multiple exhibits. As of the time we
5 filed, all objections were due on September 8, 2011.
6 This supplemental objection is untimely.

7 Briefly, I'm just going to go over the things
8 that have changed in -- it's almost been a year since
9 our last informal conference. The first thing, since
10 our last informal conference, the Oklahoma Supreme
11 Court made a determination in a case called Daffin v.
12 The Oklahoma Department of Mines. In that case -- and
13 I'm not going to provide you a lengthy legal analysis,
14 but there were two main points of the Daffin case.
15 And the Oklahoma Supreme Court determined that
16 restricting the informal conference process to people
17 who live within a one-mile radius of the proposed
18 mining site was in violation of due process and they
19 also -- the Supreme Court also found that all of those
20 individuals who believed they may be affected by the
21 proposed mining site have the right to participate in
22 the informal conference.

23 And that is why we're here today is because
24 this decision came down in the spring of 2011 in
25 between the last informal conference and this informal

1 conference and to allow everyone who previously
2 believed that they could not speak or did not attend
3 the informal conference, this gives those individuals
4 who are beyond the one-mile radius a forum to be able
5 to speak at the informal conference and raise their
6 concerns or objections.

7 The second thing that occurred, if you were
8 at the last informal conference, the record was left
9 open until January 14, 2011. Arbuckle Aggregates
10 supplemented our application to include a monitoring
11 and management program and that's the exhibit
12 Mr. Sholar discussed when he was listing off the
13 exhibits, the amendment to the Arbuckle Aggregates
14 application. The monitoring and -- and management
15 plan was something that is not required of Arbuckle
16 Aggregates, but what we did is we sat down and we took
17 all of the concerns that were raised at the last
18 informal conference and we came up with a plan to
19 address those concerns.

20 Because the monitoring and management plan
21 has been attached to our application for permit with
22 the Oklahoma Department of Mines, any violation of our
23 monitoring and management plan will affect Arbuckle
24 Aggregates's ability to continue its mining
25 operation. The plan provides that the -- for the

1 monitoring of ground water via wells on or around the
2 proposed mining location and there are nine total
3 proposed wells we plan to monitor, and some of those
4 we will need landowner access for those that are not
5 on our property. Out of those nine wells, four of
6 those were proposed to start monitoring prior to the
7 commencement of a mining operation.

8 The plan also provides for Arbuckle
9 Aggregates to monitor the Clement Holder Spring prior
10 to the commencement of mining operations. The plan
11 also provides for Arbuckle Aggregates to monitor daily
12 precipitation on the site and that is also prior to
13 the commencement of mining operations. And the whole
14 purpose of starting that monitoring before the
15 commencement of monitoring operations is to give a
16 baseline of what's going on as far as with the water
17 on the application. All of the monitoring data
18 identified will be provided to the Oklahoma Department
19 of Mines and the Oklahoma Water Resources Board for
20 analysis on a quarterly basis.

21 Arbuckle is committed to the development of
22 water source accounting program that will meter the
23 consumptively used pit water and create a preferential
24 list of water sources to best conserve the water in
25 the area. Arbuckle Aggregates's application for

1 mining permit is unchanged, other than the addition of
2 that monitoring and management program.

3 The third thing that has changed since we
4 were at our last informal conference was the passage
5 of Senate Bill 597 which was codified into Title 82
6 Section 1020.2, and that regulates the water
7 accumulating in a mining pit over a sole-source
8 aquifer and that particular statute went into effect
9 May 26, 2011. Just to give you some background in
10 case you're not familiar with Senate Bill 597, there
11 was concern over water collecting in a mining pit over
12 a sole-source aquifer, which the only sole-source
13 aquifer in the state is the Arbuckle-Simpson Aquifer
14 and so water collecting in mining pits over this
15 Arbuckle-Simpson Aquifer and the need for that water
16 to be regulated like ground water.

17 Starting in January 2011, the Oklahoma Water
18 Resources Board requested interested parties
19 participate in the drafting of the proposed
20 legislation which would eventually become Senate Bill
21 597. Arbuckle Aggregates actively participated in the
22 drafting of Senate Bill 597 along with the OWRB, the
23 Oklahoma Department of Mines, CPASA, the Chickasaw
24 Nation, the Choctaw Nation, and the Oklahoma
25 Aggregates Association and its members. There were a

1 total of 13 meetings at the OWRB to work on the draft
2 language for Senate Bill 597. Arbuckle Aggregates
3 attended all 13 meetings and devoted countless hours
4 to collaboratively working in conjunction with all of
5 the other parties to come up with meaningful language
6 for this proposed legislation and to protect the
7 Arbuckle-Simpson Aquifer.

8 On May 26, 2011 the governor signed this into
9 law. Arbuckle Aggregates intends to comply with the
10 law and adhere or exceed the requirements of the law.
11 And all the -- the requirements contained within
12 Senate Bill 597 it -- that passed in May 2011 --
13 Arbuckle Aggregates had already amended its
14 application, its monitoring and management program
15 that I have discussed, to voluntarily do all those
16 things: monitor the water, provide that data to the
17 Oklahoma Water Resources Board, and go -- in fact, go
18 above and beyond what was required by Senate Bill 597.

19 The fourth and final change that has occurred
20 was the -- the Arbuckle Aggregates development plan
21 for the property as submitted by ODM, the Oklahoma --
22 as submitted to the Oklahoma Department of Mines does
23 not need a Section 404 permit. This issue came up in
24 the last informal conference. It's come up on the
25 objection letters to this conference and I just want

1 to explain to you the -- the process that we went
2 through to get the determine -- to determine if a 404
3 Clean Water permit was needed.

4 Arbuckle Aggregates retained an environmental
5 expert to determine if any permits were needed from
6 the Corps of Engineers. It was determined that
7 Arbuckle Aggregate -- Aggregates's development plan
8 required several nationwide permits or NWPs. The NWPs
9 have not been -- have been request -- have been
10 provided to the Oklahoma Department of Mines as
11 required. It was determined that a Section 404 permit
12 was not needed. At our last meeting, the attorney for
13 CPASA raised the question of whether Arbuckle
14 Aggregates needed a 404 permit. It was not an
15 engineer, it was not a environmental expert, it was
16 their attorney.

17 Arbuckle relied on our environmental expert,
18 but in an abundance of caution, we hired a second
19 additional expert to review our need for a 404
20 permit. The second expert conducted an analysis and
21 field studies and concluded that Arbuckle Aggregates
22 did not need a 404 permit. To be absolutely positive
23 that we did not need a 404 permit, Arbuckle Aggregates
24 contacted the regulating agency, the Army Corps of
25 Engineers, and requested a determination if the 404

1 permit was necessary.

2 The Corps of Engineers reviewed our expert's
3 analysis and conclusions and conducted a field study,
4 then determined that we did not need a 404 in
5 relationship to our development of the property. The
6 material submitted to the Corps of Engineers was the
7 same material submitted to the Oklahoma Department of
8 Mines. The Corps considers the matter closed and I
9 would like to introduce as an exhibit the letter that
10 was received from the Corps of Engineers on April 26,
11 2011 stating that Arbuckle Aggregates does not need a
12 404 permit.

13 And that's all we have for our update. I
14 appreciate your time.

15 MR. SHOLAR: This will be Exhibit No.
16 57.

17 AUDIENCE MEMBER: Can we ask questions?

18 MR. SHOLAR: They will -- you will have
19 a chance to speak and then -- they will -- and they
20 can address your questions at the end.

21 Is there anybody else from Arbuckle
22 Aggregates that is going to be speaking?

23 MS. NICHOLS: No.

24 MR. SHOLAR: All right. Again, we're
25 going -- we're going to start with the -- the

1 individual speakers. You will have three -- you will
2 have three minutes to speak. Mr. Shore has -- has the
3 cards over here and a timer and he will let you know
4 the time as it comes down and at the end, there is a
5 timer that has a beep on it, so it will alert us that
6 it is time to move on. So we will go ahead and get
7 started.

8 Our first one, if I -- Ford Chapman?

9 MR. CHAPMAN: Fred.

10 MR. SHOLAR: Fred Chapman.

11 MR. CHAPMAN: But I don't want to say
12 anything at this time.

13 MR. SHOLAR: All right. Mr. Chapman
14 does not want to speak.

15 Floy Parkhill.

16 MS. PARKHILL: I don't have anything
17 further to add to the testimony that I gave earlier.

18 MR. SHOLAR: Okay. Miss Parkhill does
19 not have anything new to add from her last testimony
20 in December 2, 2010.

21 Zeno McMillan. Mr. McMillan, if you -- if
22 you would state your name and address for us, please,
23 sir.

24 MR. McMILLAN: Zeno McMillan, 7995 South
25 Lone Cedar Road, Mannsville, Oklahoma, 73447.

1 MR. SHOLAR: Thank you, sir.

2 MR. McMILLAN: I appreciate the
3 opportunity to protest today. I didn't get to
4 before. I didn't receive the notice letter where it
5 was happening today, but luckily somebody told me it
6 was here.

7 My family makes a living ranching on some
8 property over the Arbuckle-Simpson just south of the
9 current mines and we depend on springs to water our
10 cattle and for our deer hunting purposes and so be it,
11 and those springs are the headwaters for multiple
12 creeks that fellow landowners south of us also depend
13 on for the same purposes. And I just feel the -- the
14 current situation with our drought conditions and the
15 mining situation as it is, any future mines would be
16 detrimental to the water supply, not only for now but
17 the future. The -- the area is only going to grow,
18 going to get more people, and if you want development
19 and you want the community to grow and you want the --
20 the current people living there to be happy, we have
21 to have water. And if that's what we depend on for
22 our livelihood like I do, you really depend on it. So
23 that's -- that's pretty well all I have to say.

24 MR. SHOLAR: Thank you. Thank you,
25 sir. We appreciate your comments.

1 Roy Robbins.

2 MR. ROBBINS: I'll let stand what I said
3 at the last meeting.

4 AUDIENCE MEMBER: And it's Reg Robbins.

5 MR. ROBBINS: It's Reggie Robbins.

6 MR. SHOLAR: Reg -- Reggie. So Reg
7 Robbins. Mr. Robbins has spoken on December 2, 2010
8 and he will let those -- those statements stand for
9 his statements this time as -- as well. Might help to
10 put my glasses on.

11 Shannon Shirley. State your name and
12 address, please, ma'am.

13 MS. SHIRLEY: Yes, sir. My name is
14 Shannon Shirley. I live at 2370 North Daube Ranch
15 Road, Mill Creek, Oklahoma, 74856.

16 MR. SHOLAR: Thank you.

17 MS. SHIRLEY: As I said before, my name
18 is Shannon and I live in Mill Creek, Oklahoma, and I
19 live on Mill Creek. I'd like to thank the Oklahoma
20 Supreme Court for making us a little bit more valid
21 protestants in this informal conference.

22 My family and I depend on Mill Creek for our
23 domestic use. We have a well, but it's in Granite, so
24 it only has water when it rains. Mill Creek has been
25 severely compromised by the mining industry in the

1 area. It just makes sense, when you pump millions and
2 millions of gallons of water out of a pit surrounding
3 the spring that that spring will suffer greatly.
4 Arbuckle Aggregates proposes to mine the tributaries
5 and in the basin that supports Mill Creek. I think it
6 will be the final nail in Mill Creek's coffin. I
7 believe it should be the obligation and the duty of
8 the Department of Mines to not grant a permit to a
9 mine without knowing what the consequences will be.

10 The citizens of Oklahoma and their well-being
11 and the quality of life should trump industry,
12 especially out-of-state industry. We pay the taxes
13 that support the Department of Mines. To allow
14 Arbuckle Aggregates to proceed may well destroy this
15 area and I'm pretty sure it will take out Mill Creek.
16 Money for an outside, out-of-state business with maybe
17 a handful of employees does not outweigh the citizens
18 of Oklahoma or the tourist dollars that we depend on
19 in this area. When you're talking about people's
20 lives and people's property and people's water, it's
21 way more important than aggregates.

22 I don't know what we're supposed to do when
23 there's no water left in the creeks. That's all we
24 have here for water. We don't have wells, not in
25 Granite. We know that the tourism will be gone when

1 the water goes. The priorities here are all wrong.
2 We -- I can't even believe we're having this fight.
3 We shouldn't even be having this discussion. We have
4 the science, we have USGS modeling, we have the most
5 studied aquifer in the entire state. We know what's
6 going to happen. It's already happening. And I
7 appreciate you having this second informal conference
8 for us.

9 MR. SHOLAR: Thank you, ma'am.
10 Appreciate it.

11 Gloria Webb.

12 MS. WEBB: Gloria Webb, 1250 Webb,
13 Tishomingo, Oklahoma.

14 I just want to agree with what Shannon said.
15 I don't know why we're having to do this. It's an
16 axiom, automatic, that water flows. It's not like
17 rock that stays where it is. Water flows and seeks a
18 level and it's also obvious that if you draw the water
19 out, the water level is going to drop, and it's going
20 that in Kansas and Texas, nationwide, the water level
21 has dropped. You draw it out, it's gone. And as a
22 psychiatric nurse, to me, it's psychotic that people
23 think they can draw out water for their own benefit
24 and profit and deprive other people who depend on that
25 water. Thank you.

1 MR. SHOLAR: Thank you, ma'am.

2 Larry Johnson.

3 MR. JOHNSON: My name is Larry Johnson.

4 I live at 6503 North Bellwood Road, Mill Creek,
5 Oklahoma.

6 I live about four miles southeast of the
7 proposed mine site. My concern is about the water. A
8 few years ago, Mr. Dawson was working for Arbuckle --
9 not Arbuckle -- Martin Marietta and I went to all
10 their meetings in Oklahoma City and their argument was
11 that when they dug their mine, they weren't going to
12 get any substantial water. They had all kind of
13 experts. The experts said well, yes, we -- we may hit
14 some and the water level will drop in surrounding
15 areas. I know that -- that this time they're going to
16 have experts that are going to tell us the same thing.
17 If you throw enough money out to an expert, you can
18 get them to say anything you want.

19 We've got too many mines in the Mill Creek
20 area. There are a bunch of families that live very
21 close to this mining operation and there's been no
22 guarantee of bringing us any rural water or anything
23 else. If they dig their mine and we run out of water,
24 from their prior experts, they said the water level
25 was going to drop. We run out of water, then what do

1 we do? Aside from the water, there's hundreds of
2 trucks every day that run Highway 1. All of the
3 surrounding area I'm sure, myself included, we replace
4 the windshields in our vehicles quite often. That's
5 not the mine's fault. It's really not even the
6 truckers' fault, but they have a gravel road they go
7 in and out of the mine sites and when they leave and
8 go down the highway, there's rocks stuck in their
9 treads and they're going to damage our vehicles.

10 I -- it's kind of like you putting the cart
11 before the horse in all of this. Mr. Dawson and his
12 company go and procure land, then they want the permit
13 to mine after they already own the land. I feel it
14 should be the other way around. You should locate the
15 land, get your permit, and then develop your mine.
16 That's really all I've got to say.

17 MR. SHOLAR: Thank you, sir. I
18 appreciate your time.

19 Mr. Smith, do we have any more pink sheets?
20 All right. Now we will --

21 MR. CHAPMAN: Can I speak now?

22 MR. SHOLAR: Have you signed up to
23 speak, sir?

24 MR. CHAPMAN: I was the first one.

25 MR. SHOLAR: Oh, you're mister -- yes,

1 mister --

2 MR. CHAPMAN: Chapman.

3 MR. SHOLAR: -- Chapman. Yes, you may
4 speak now. Yes, sir.

5 MR. CHAPMAN: I'm Fred Chapman from
6 Ardmore. My address is Post Office Box 1754,
7 Ardmore.

8 My folks have been in this area a long, long
9 time and we bought this property because of the
10 flowing streams and the beautiful springs. And I
11 started in the cattle business when I got out of the
12 Army in the '50s, in 1953, and we were in a drought at
13 that time and we thought it was a terrible drought,
14 but it wasn't near as bad, I don't think, as this
15 one. And my folks were here all during the Dust Bowl
16 days and we had all those fights managed, but at least
17 during the '50s, I was able to take an old diesel pump
18 that we had used for irrigation and go down to the
19 river and lay 8-inch pipe to every one of our ponds
20 that was close enough and we filled all of them up.
21 But as you know, this year, even the Washita, and
22 that's because all these flowing streams like Mill
23 Creek and we have two miles in Mill Creek between our
24 property line and the wildlife.

25 All this has been dry and there's -- since

1 this last little bunch of rain it has pepped up a
2 little bit, but our cattle, as they walk across the
3 fields down there in the bottom, the dust just boils
4 up clear around them and everybody that I see that
5 notices that, they tell me that they've never seen
6 anything like the drought that we're having at the
7 present time. For the -- about the way we have a lot
8 of dust pneumonia from this dust and there's just one
9 thing that's going to cure it and that's cutting back
10 on the amount of water that all of us are pumping out
11 of the underground.

12 And so much of our water -- we have a number
13 of ranchers, but the one above the quarry, there's
14 underground caves that carry all that water to -- to
15 our ranch house and to supply our livestock and on
16 behalf of Mr. McMillan's property. They go through
17 these caves underground and there's just not hardly
18 any water in them. My son ran out of water this week
19 at his home which is just north and west of the quarry
20 site.

21 Our water rights that we have -- have made
22 application for date back to before 1950. I don't
23 know the exact date, but we've -- every year we've
24 made our water reports on our usage. We've had a lot
25 of peanuts that we irrigated. That -- and there's --

1 can't do any of that now. This is just no time to be
2 putting in a quarry and the quarry should be put off
3 until they can sell their rock, and there's not much
4 construction going on in the United States. We have
5 plenty of quarries.

6 MR. SHOLAR: Mr. Chapman --

7 MR. CHAPMAN: Right now they're in
8 operation --

9 MR. SHOLAR: -- excuse me, sir --

10 MR. CHAPMAN: -- and this one is not
11 needed.

12 MR. SHOLAR: Mr. Chapman, if you -- if
13 you want -- your three minutes is up. If you want to
14 make a final statement, that would be appreciated.

15 MR. CHAPMAN: We would certainly -- we
16 certainly appreciate the fact that the Supreme Court
17 has taken on this case and we hope that they will keep
18 helping us to fight this situation. Thank you.

19 MR. SHOLAR: Thank you, sir. All
20 right.

21 Now we're going to -- we have our speakers
22 who are representing groups or others and so I'll just
23 randomly -- I'm going to go through this list.

24 These -- these speakers have -- have a six -- six
25 minutes and I need you to give me your name, address,

1 and if you don't have a list of who you're
2 representing, please state for the record who you --
3 who you are -- you're representing, if it's a group or
4 an agency.

5 So we'll start with Mr. Bruce Noble.

6 MR. NOBLE: Good evening. My name is
7 Bruce Noble and I'm representing the National Park
8 Service. My address is 1008 West 2nd Street, Sulphur,
9 Oklahoma, 73086.

10 I will be taking much less than my six
11 minutes of time, you'll be happy to know. I will say
12 I still stand behind our comments from the December
13 2nd meeting, both verbally and the ones we submitted
14 in writing. No major changes since then.

15 I did want to raise three questions for
16 Ms. Nichols based on her presentation. I'm happy to
17 hear about the monitoring plan. Kind of curious to
18 know who was involved in preparing it, what kind of
19 scientific expertise was reflected among the people
20 who produced the monitoring plan. Secondly, I'd be
21 curious to know can we get copies of the plan? Is
22 that something that's available to the public? I'd be
23 quite interested in -- in seeing it myself and I would
24 guess other people would as well.

25 MR. SHOLAR: Sorry to interrupt, mister

1 -- that -- that's also -- that's a part of their
2 permit now, so if you -- the permit is available at
3 the courthouse and it is in there as well. You're
4 welcome to get a copy, but it's also -- it is part of
5 their permit that they submitted.

6 MR. NOBLE: So it's public information?

7 MR. SHOLAR: Yes, sir.

8 MR. NOBLE: Okay.

9 MR. SHOLAR: Public information.

10 MR. NOBLE: Okay, very good, thank you.

11 And then the other question -- I would know
12 if I'd seen the monitoring plan, I have not, but I'm
13 just curious about the Gay well and whether that's one
14 of the nine wells that you're proposing to monitor,
15 and that is it. Thanks for everybody here tonight and
16 following this issue.

17 MR. SHOLAR: Thank you, sir. Appreciate
18 your time.

19 Laurie Anne Williams. State who you're
20 representing and then your address, please, ma'am.

21 MS. WILLIAMS: My name is Laurie Anne
22 Williams and I'm attorney and I'm representing the
23 estate of Ida Sutton Williams, address P.O. Box 1587,
24 Ardmore, Oklahoma.

25 May it please the hearing officer, as I

1 indicated at the beginning of this hearing before we
2 started, I have received a copy of the notice, the
3 second notice and order referring and setting informal
4 conference, and there is no information as to any new
5 pleadings, any -- any additional information filed by
6 the applicant in this cause. I think the concept of
7 due process -- I'm glad that the Supreme Court, as
8 Miss Shirley -- as Miss Shirley indicated, has -- has
9 taken up due process because it seems that the due
10 process is lacking in this case because, once again,
11 it -- it's like Whac-A-Mole with this case. That's
12 all I can think of. As I sat there I thought, we look
13 at something and then something else pops -- pops up
14 that's brought in and we've not ever been able to see
15 the final application that the applicant has -- has
16 filed.

17 As far as a plan, the applicant may have
18 addressed a plan amongst itself and -- and the mining
19 commission, but as far as the neighbors are concerned,
20 there's never been any discussion with any of the
21 neighbors and the neighbors are the ones who most
22 likely own the wells that they're talking about
23 monitoring. When you talk about Holder Springs and
24 the preliminary examination of Holder Springs, it will
25 have to be a preliminary examination because from the

1 initial application, once mining begins, Holder
2 Springs will be no longer. There will be no springs
3 there.

4 As I -- I am -- I'm very glad that your
5 client, Miss Nichols, a Texas company whose principals
6 are currently the subject of several federal
7 proceedings, were invited to help regulate Oklahoma
8 water, whereas the estate of Ida Sutton Williams, the
9 owner of 8,000 acres since the early 1900s, was
10 provided no opportunity to participate in any of
11 that. The estate of Ida Sutton Williams owns a ranch
12 called Mill Creek Ranch. It's 8,000 acres directly
13 south and adjacent to the 575 acres that this Texas
14 company has purchased.

15 This application has gone on for several
16 years now. The only need that I have identified is
17 greed. It is greed by people who are already under
18 examination in federal proceedings in which their
19 ability to manage Texas resources is already in
20 question. So they've come to Oklahoma. Now, I've
21 already presented and you mentioned the exhibits that
22 I submitted in appropriate time, numbers 38, 39, 40,
23 and 41, that concern the applicant's principal parties
24 and the federal proceedings with regard to their
25 financial situation.

1 Miss Nichols has made no response in her
2 opening comments to any of those items. As I said
3 today, there's been no notice of any new application
4 or of any new information or of any monitoring
5 program. The only need that is being expressed here
6 is greed. And for those of us who only want to see
7 the water stay in Johnston County, it's pretty sad.
8 And it's sad that our Oklahoma Department of Mines as
9 the Oklahoma Department of Mines isn't listening to
10 this group who is long-time Oklahoma and hopefully
11 will continue to be here.

12 My final comment is, as I've said to several
13 people, I know the mining industry is elated by this
14 draft because it may mean that we're out of here
15 faster and that they can continue to take that water
16 by allowing it to flow into those fractures when we're
17 suffering, and you've heard it so far from the
18 individuals here and waste the water that is due
19 Oklahoma. Thank you for your attention.

20 MR. SHOLAR: Thank you, Miss Williams.
21 I will note -- address one of your comments about the
22 notice. You said you received the notice and also it
23 was published in the paper that there was going to
24 be -- for this application. It also in -- in both of
25 those it said that the copy of that permit application

1 was available for review in the -- in the courthouse
2 and that updated permit is -- it has been since August
3 1st available for review -- to view the updated
4 permit, so that has been -- that has been made
5 available. That is part of -- of a rule in the state
6 -- the state statute. We have to be required to put
7 that in there and it has been since August 1st.

8 MS. WILLIAMS: Sir, it is not my intent
9 to be contrary, but I am happy to give you my only
10 copy of the second notice and order referring and
11 setting informal conference that was mailed to me and
12 there is no reference to anything filed anywhere that
13 is available.

14 Now, the first notice of hearing back filed
15 whenever it was filed, but for which we had the
16 hearing on December 10th, and I'm happy for you to
17 review this that was sent to me and I -- I assume you
18 have it in your files, but I will submit it as an
19 exhibit. I won't give you my only copy, but I am
20 happy to submit that.

21 MR. SHOLAR: I have a copy -- I have a
22 copy of that, so.

23 MS. WILLIAMS: Well, I hope you will
24 take judicial notice or whatever notice an informal
25 conference takes that there is no such language in the

1 mailed second notice to us.

2 MR. SHOLAR: I do note it. Thank you,
3 ma'am.

4 Mr. Dick Scalf.

5 MR. SCALF: Dick Scalf. My address is
6 Post Office Box 851, Ada, Oklahoma, 74820.

7 I'm currently serving -- serving as mayor of
8 the City of Ada. There's not anything more important
9 to the City of Ada than the future of the Arbuckle-
10 Simpson Aquifer. As part of the management plan for
11 that aquifer, as a result of Senate Bill 288, Ada
12 required and will be accounting for every gallon of
13 water that we use. What we would expect is every
14 other user to abide by the same requirements.

15 MR. SHOLAR: Thank you, sir. Appreciate
16 your comments.

17 Lewis Parkhill.

18 MR. PARKHILL: Thank you, Mr. Sholar.
19 Thank you for the opportunity to speak. Thank you
20 also for acknowledging receipt of the comments that I
21 made at the December meeting and I won't be repeating
22 those. It's my understanding that the -- they are now
23 valid presentation after the extension of the one-mile
24 exclusion?

25 MR. SHOLAR: Correct. Everything that

1 was brought up in -- in the record at the first
2 conference is still a part of the record.

3 MR. PARKHILL: Thank you. I would just
4 add with what -- what Miss Williams says, I do have my
5 copy of the notice of this meeting and if it has any
6 language in there specifying a revision of the
7 applicant permit, I can't find it, and I'd be happy to
8 let anyone review that and see if you can point it out
9 to me, so. I may be overlooking it.

10 I would like to add two comments. One, a
11 resolution passed by the City of Tishomingo City
12 Council after the hearing, which I did amend my -- add
13 to my -- my comments, but I would like to present that
14 orally tonight and I'd like to also second what Mayor
15 Scalf, City of Ada, said about the obligations of
16 cities since I'm speaking in the behalf -- I didn't
17 identify myself. I'm Lewis Parkhill, 409 South
18 Mickle, Tishomingo, Oklahoma, 73460, 12-year member of
19 the Tishomingo City Council, serving a fourth term
20 as -- as mayor.

21 And at city accountability, we -- we worked
22 on permits and we have to report to the Oklahoma -- we
23 have to report to the Oklahoma Water Resources Board
24 how many gallons of water we use, and I would add that
25 we are currently in a situation where we're monitoring

1 the spring flow -- stream flow of Pennington Creek
2 very closely. Pennington Creek is the sole source of
3 the City of Tishomingo's municipal water supply.
4 Currently it flows about 6 cubic feet per second which
5 is less than one-half of the previous seven-year low
6 of 12 to 13 cubic feet.

7 I was living in Johnston County in 1956 when
8 the Washita River stopped flowing, and at that time
9 Lake Texoma's level was around 600 feet and at that
10 time Tishomingo did not have sufficient water for its
11 supply. At current trends and with the current lack
12 of rain, the City of Tishomingo is going to need every
13 gallon of water the springs can produce for Pennington
14 Creek to -- to maintain our water supply. So we have
15 great concern about the -- the vitality and -- of
16 those streams and very concerned about any possible
17 threat to those -- those springs.

18 I would at this time like to add into the --
19 to the record this reading of a resolution adopted by
20 the -- unanimously by the Tishomingo City Council
21 December 20, 2010.

22 "Whereas Pennington Creek is a designated
23 high quality water emanating from Arbuckle-Simpson
24 Aquifer, a sole-source aquifer and the sole source of
25 municipal water for the City of Tishomingo, and

1 whereas open-pit mining on the Arbuckle-Simpson
2 Aquifer poses a real and present danger both to
3 quantity and quality of the water supply on which our
4 city depends, and whereas the example evidence of
5 degradation and waste of Mill Week water from present
6 and ongoing aggregate mining over the Arbuckle-Simpson
7 Aquifer in close proximity to the springs and streams
8 which form Mill Creek, and whereas the City of
9 Tishomingo is a prior downstream beneficial user of
10 the high-quality water of Pennington Creek, and
11 whereas Johnston County residential and agricultural
12 users are also prior beneficial users of water from
13 the aquifer and Pennington Creek, and whereas two --
14 and whereas two U.S. government facilities, the
15 Tishomingo National Fish Hatchery at Reagan and the
16 Tishomingo National Wildlife Refuge in Tishomingo, are
17 prior beneficial users of Pennington Creek and depend
18 upon its waters to fulfill the missions, be it hereby
19 resolved that to protect the future well-being and
20 quality of life in this community and of the other
21 county citizens and government agencies that depend on
22 this water source, that the City of Tishomingo calls
23 upon the Oklahoma Mining Commission to exercise its
24 authority and deny the application of Arbuckle
25 Aggregates for a permit to conduct open-pit aggregate

1 mining over the Arbuckle-Simpson Aquifer in a location
2 in close proximity to springs and tributaries of the
3 Arbuckle-Simpson Aquifer which form the headwaters of
4 Pennington Creek." Signed by council members Lewis
5 Parkhill, mayor; Jimmie Sweat, vice mayor; Rhonda
6 Brown; Joyce Medina; Rex Morrell. Thank you.

7 MR. SHOLAR: Thank you, Mayor Parkhill.

8 To go back and address the issue Miss
9 Williams brought up earlier, you -- looking at the
10 notice, I -- you are correct; it is not mentioned
11 directly in there that a copy is -- is available in
12 the notice you received. But where it is is when the
13 applicant is required to publish their -- publish such
14 in their -- in the paper four consecutive weeks when
15 they ran it the first time and in there it does direct
16 you -- anybody has any questions about the permit to
17 the -- the county -- county clerk's office to review a
18 copy.

19 And that is where that copy is, so it was
20 published as required by state statute in the news --
21 in the newspaper four consecutive weeks. But no, it
22 was not listed in that -- the letter you got. That
23 was just a notice that the meeting is going -- is
24 going to take place.

25 MS. WILLIAMS: May I respond to that,

1 sir, since you --

2 MR. SHOLAR: You may since I've opened
3 it up, yes.

4 MS. WILLIAMS: Laurie Anne Williams for
5 estate of Ida Sutton Williams.

6 If indeed there was notice in the paper that
7 included such a statement, then why have we been given
8 a second type of notice that didn't have it? Now,
9 this brings me to some very serious questions about
10 how the applicant operates through any of this. If
11 this is to be held out as the same notice that has
12 been published in the paper, then, sir, you must
13 examine this yourself. We've brought it to the
14 attention of this group, we have brought it to your
15 attention, and, again, with respect to due process,
16 due process has been missing through a lot of this.

17 We're here today because the Supreme Court
18 said, mining commission, you're not giving appropriate
19 due process and notice -- and opportunity to be heard
20 and we're thankful to be here today to reiterate that,
21 but, again, it's like Whac-A-Mole; it keeps going this
22 way. I live -- the ranch and the people who lease the
23 ranch -- we live right next door to this property.
24 We've never been invited to talk with them, they've
25 never called us, they've never written.

1 MR. SHOLAR: Let's address the issue
2 that we talked about.

3 MS. WILLIAMS: It's about notice.

4 MR. SHOLAR: Okay. I'm --

5 MS. WILLIAMS: And when this applicant
6 says oh, we've given notice and we're good neighbors,
7 neither is true.

8 MR. SHOLAR: Well --

9 MS. WILLIAMS: Thank you, sir.

10 MR. SHOLAR: Yes, ma'am. I am in no way
11 defending the company. That's not my job. I am
12 impartial in my -- in my decision.

13 But I will say that the second notice was not
14 put into the paper by the -- by the company. That is
15 something the Oklahoma Department of Mine provides
16 to -- to -- to our -- ourselves. We put that in there
17 just as a notice to let the public know in addition to
18 all those who are qualified applicant -- qualified
19 protesters, excuse me, it just lets the rest of the
20 public know that there will be a meeting. It's not
21 meant as a public notice of -- of the application
22 being on file. It is just merely to let you know
23 there is a meeting because the application being on
24 file has already been -- notice has already been given
25 through -- as required through -- through the paper.

1 So that is not their job. We have -- that is what we
2 have done.

3 MS. WILLIAMS: Sir, you will recall,
4 though, that we -- the people who appeared on the --
5 in the December 2010 hearing are participants in this
6 case. We are -- we have appeared and they know us.
7 We are not unknown to either the applicant or to you.
8 Your responsibility I believe was to have notified us,
9 not just that we could appear today again, but what
10 had transpired in the interim since we thought we
11 finished a hearing.

12 So I believe that both of you should have
13 provided notice along with any amendments that you
14 have put of record at the mining commission so that we
15 would have appropriate due process and an opportunity
16 to be heard, not just to talk to each other for fun,
17 but to actually address what is pending before you.
18 And once again, we have not been given that process
19 and an opportunity to be heard on the issues that are
20 now, we've learned today, pending before you that have
21 been submitted past the December 10 hearing and before
22 today.

23 MR. SHOLAR: So -- so noted.

24 MS. WILLIAMS: Thank you.

25 MR. SHOLAR: Just so for clarification,

1 Miss Williams, did you con- -- after you received the
2 notice in the mail, there's -- did you contact the
3 Department of Mines and ask them about the permit or
4 anything, if it was -- if anything was different? Or
5 did you just assume it was the same?

6 MS. WILLIAMS: I was sent a second
7 notice and order referring this. I knew when exhibits
8 were due, January 14th, so no, sir, I did not.

9 MR. SHOLAR: All right. Thank you very
10 much. Okay. Let's go on to -- to the next -- the
11 next speaker. Thank you for bringing that to our
12 attention.

13 Amy Ford.

14 MS. FORD: Amy Ford and I'm here on
15 behalf of CPASA and my mailing address is P.O. Box
16 882, Tishomingo, Oklahoma.

17 A couple of issues specifically that I would
18 like to talk about. CPASA is concerned about the
19 sustainability of the aquifer. We're not just
20 concerned about mining's impact on it. We expend a
21 great deal of time working with a large number of
22 individuals to make sure that this aquifer is here for
23 us in the long-term because we live here. Immediately
24 following the December 10th meeting that we had here,
25 we met with the Arbuckle Aggregates group and sat down

1 because they wanted to hear our concerns and we were
2 pleased with that. We had a number of meetings over
3 the course of the next six months. The last meeting
4 was in July of 2011.

5 During those meetings, CPASA brought up
6 several concerns that we have and continue to bring
7 those up. The -- in the interim, CPASA sat down with
8 Hanson Aggregates and worked out a memorandum of
9 understanding, and those -- that memorandum --
10 memorandum of understanding had some key points in it:
11 management, monitoring, and mitigation. Arbuckle
12 Aggregates we felt should sign nothing short of that
13 and they failed to agree to those conditions.

14 Monitoring -- Ms. Nichols talked about the
15 monitoring that they are going to be doing. All
16 monitoring is going to do is tell us how badly they're
17 affecting the aquifer. We don't need just numbers.
18 Numbers are great, but unless we have an opportunity
19 to have a plan with input, not just from the mining
20 company, but input from other individuals who have a
21 vested interest in the sustainability, then, you know,
22 we're not going to get anywhere. We want to -- we
23 need to see a proper management plan. We need have to
24 mitigation options in there.

25 So there are a lot of things that we feel are

1 very vital to be in place before the Department of
2 Mines moves forward on this application. You have a
3 number of representative municipalities up here. We
4 are in a drought. Individual wells are going dry.
5 People are having to haul water in. Their streams are
6 dry. Springs are ceasing to flow. And failure of an
7 industry to come in here, claiming they want to be a
8 good neighbor but to adhere to the same requirements
9 that a number of municipalities have and that -- that
10 we all adhere to is just -- it's just something that
11 we're not going to stand for and we ask on behalf of
12 CPASA that you deny their mining application.

13 MR. SHOLAR: Jason Aamodt. Mr. Aamodt,
14 just like Miss Ford has already represented CPASA. Do
15 you -- do you have something additional to add or...

16 MR. AAMODT: I do. Thank you.

17 MR. SHOLAR: All right. I'll -- I will
18 -- I will allow it.

19 MR. AAMODT: Thank you. I appreciate
20 that.

21 A couple of exhibits just to start. We
22 have -- just to make it clear for the record -- and I
23 don't know if it's already in, maybe it is, but we'd
24 add an exhibit -- we would add as an exhibit the
25 second notice and order referring and setting the

1 informal conference.

2 MR. SHOLAR: That will be Exhibit 58.

3 AUDIENCE MEMBER: 58.

4 MR. AAMODT: And then CPASA would also
5 provide as the next exhibit its supplemental brief in
6 opposition to Arbuckle Aggregates's permit application
7 together with the exhibits thereto.

8 MR. SHOLAR: Exhibit 59.

9 MR. AAMODT: Give me a second to get the
10 hardware started.

11 Mr. Hearing Examiner, while we're waiting for
12 the computer to start up, my name is Jason Aamodt. I
13 represent the Citizens for the Protection of the
14 Arbuckle-Simpson Aquifer. My address is 1723 South
15 Boston Avenue, Tulsa, Oklahoma, 74119.

16 I believe the applicant has objected to our
17 supplemental brief which I think has just been marked
18 as Exhibit No. 59. It's not late obviously. The
19 board is still taking exhibits. That's why you have
20 the table set up to do that. And we appreciate you
21 having accepted our exhibit. Can you hear me better
22 now? Thank you.

23 The -- the main thrust of what I wanted to
24 present to you is the question, Mr. Hearing Examiner,
25 of whether or not there's a definite map on file.

1 This issue arose to us because we became concerned
2 that we couldn't figure out what Arbuckle's mining
3 plan really is. And as you know, under the -- the
4 Department of Mines's rules, the mining applicant has
5 an obligation to submit a definite mining plan. It's
6 kind of the key to every mining application. Without
7 one, the mining application is defective and -- and it
8 has to be rejected.

9 In this case, we think the mining application
10 is defective because there is no definite plan and
11 therefore must be rejected and I'd like to show you
12 what I'm looking at. Can you see -- well, that's
13 unfortunate. There it is. Can you see the
14 presentation, Mr. Hearing Examiner? And I'd like to,
15 if you'd permit me, to mail you a copy of this
16 presentation and to mark it as the -- as our last
17 exhibit in this proceeding.

18 MR. SHOLAR: Presentation will be -- be
19 Exhibit 60.

20 MR. AAMODT: 60.

21 As you can tell under Oklahoma Department of
22 Mines Rule 460 OAC, 10-9-6, the mine has to detail the
23 affected areas, the incremental mining areas, and
24 outlying stockpile areas in addition. And
25 additionally, the -- the rules provide that the -- the

1 onus is on the mine operator to comply with the rules
2 and the mine operator has to obtain the required
3 permits in addition to that.

4 Now, this was Arbuckle's first mining map.
5 This is from their initial application. It's the
6 third page in our spread -- in our PowerPoint
7 presentation. I've annotated it with an area that
8 I've called a wetland and another that I've called an
9 office. Those things move and Arbuckle's mining plan
10 moves with respect to that. Here is a map that wasn't
11 presented to the mining commission but was presented
12 to the water board. And this map actually shows
13 Arbuckle building a lake down here somewhere in
14 connection with the -- the -- the wetland area which
15 I've shown as the blue oval.

16 And then this is another water board map and
17 this one is interesting because if you'll notice,
18 Mr. Hearing Examiner, it shows right here that there's
19 going to be this stockpile, rock stockpile area,
20 that's right in the middle of where this wetland is
21 known to be. So we brought this issue up as
22 Ms. Nichols alluded to earlier. We brought it up with
23 them. Actually, we alerted the Army Corps of
24 Engineers to what was going on and Arbuckle did hire a
25 consultant called Blackbird Environmental. Blackbird

1 produced this map. And what's interesting about this
2 map is they went out and they mapped a bunch of these
3 different wetlands.

4 I can see I have a minute. Given the
5 difficulties of getting started with the exhibits, if
6 I might have a couple of extra moments, I would
7 appreciate it.

8 MR. SHOLAR: Wasting time talking to me,
9 so just go ahead.

10 MR. AAMODT: Okay. So I've highlighted
11 the -- the wetland area in question because when you
12 look at what Blackbird Environmental did with their
13 mining map, you'll see with their review of the
14 various different wetland areas, you'll see that
15 actually Blackbird ignored the wetland that was at
16 issue and you'll see on page 8, or slide 8, of our
17 exhibit, that wetland -- the wetland that's actually
18 at issue is five-acre wetland where Arbuckle says
19 they're going to place their storage pile doesn't show
20 up as a wetland that -- that Blackbird reviewed.

21 MR. SHOLAR: Since you -- since you have
22 prepared this, I will give you a couple of extra
23 minutes, but let's -- let's kind of make it -- make it
24 brief, please.

25 MR. AAMODT: Yes, your Honor, I'll make

1 it very brief, thank you. I appreciate your
2 indulgence.

3 And so then what Arbuckle did in -- in
4 response to the 404 issue is they revised their mine
5 map. This is the revised mine map from the January
6 14, 2011 application, and I don't know if I've seen a
7 map from the August 14th application or if there's any
8 difference. We may have. I'm not aware of it.

9 In any event, what's interesting about this
10 map when you look at the last page of our spreadsheet
11 is what Arbuckle has done. They've -- and it's kind
12 of faint in this picture, but you can see these little
13 green lines along the stream. What Arbuckle has done
14 is they've said sure, that's a wetland and what we're
15 going to do is we're just going to draw our mine
16 around it. So instead of complying with the law that
17 requires them to get a 404 permit, they're simply
18 trying to draw lines on a piece of paper in order to
19 avoid having to comply with the law.

20 And, now, that's the newest mine map. I
21 don't know which one of these mine maps it is that
22 Arbuckle's planning on following. Is it the mine map
23 that they gave to the Army Corps of Engineers that's
24 different from the mine map that they gave to the
25 Oklahoma Department of Mines? Is it the mine map that

1 they gave to the Oklahoma Water Resources Board that's
2 different than both of the different mine maps that
3 the applicant gave to the Oklahoma Department of
4 Mines? There's at least three or four or five
5 different maps running around out there. You're being
6 told one thing about what this mining application
7 looks like, but the other state and federal agencies
8 are being told a different thing. Which map is it?
9 Because there is not a definite single map that this
10 applicant is operating under, their application must
11 be denied. I do appreciate the opportunity to provide
12 the supplementary evidence.

13 MR. SHOLAR: Thank you, sir.

14 MR. AAMODT: Thank you.

15 MR. SHOLAR: All right. Before I have
16 the applicant come up, I've worked my way through both
17 lists. Is there anybody -- additional party would
18 like to -- want either an individual or is there
19 anyone like to speak? Because I will call the
20 applicant up if -- if not so we can move this thing
21 forward. Okay.

22 Arbuckle Aggregates, you all have got -- got
23 the floor again.

24 MS. NICHOLS: Could we have five minutes
25 to discuss amongst ourselves before our response

1 period?

2 AUDIENCE MEMBER: We -- we can't hear.

3 MR. SHOLAR: They want to take a five
4 minute --

5 MS. NICHOLS: Can we have a five minute
6 --

7 MR. SHOLAR: Why don't we take a five-
8 minute break.

9 MS. NICHOLS: Five minutes.

10 MR. SHOLAR: So let's take -- let's take
11 a brief break and then come back and I'm sure they
12 will answer every question that you all have.

13 (Recess taken from 7:59 p.m. until
14 8:13 p.m.)

15 MR. SHOLAR: All right. We are now back
16 after the break to finish our discussion of Arbuckle
17 Aggregates, LLC's permit application PAN-10-05-IC2.
18 We have heard from the applicant originally, we've
19 heard from our objectors, and now we're going to give
20 the applicant time to address any questions and issues
21 that were raised here tonight, so Arbuckle Aggregates,
22 you have the floor.

23 MS. NICHOLS: Thank you. Again, I'm
24 Elizabeth Nichols and I appreciate all of your
25 concerns and you taking the time out of your day to

1 attend today to discuss this with us.

2 I think there is a little bit of
3 misunderstanding as to the monitoring and management
4 plan that was attached to our application. Can you --
5 louder? Better? Okay.

6 The monitoring and management water plan that
7 was added to our application was not done so
8 recently. It was done so back in January 2011
9 specifically at our last informal conference. The
10 record was kept open for anybody who attended the
11 meeting to submit additional information by January
12 14, 2011. That is when our monitoring and management
13 plan was submitted. It wasn't a recent submittal. It
14 was back in January, so that has been part of the
15 public record at the Oklahoma Department of Mines
16 since January of 2011.

17 The question came up as to what's -- if we
18 created this management and monitoring plan with the
19 assistance of scientific help. We did. We have
20 retained a PhD in environmental studies and he has
21 assisted in the review and -- and made -- provided
22 scientific information and basically provided the bulk
23 of the input for the management and monitoring plan.
24 Mr. Aamodt brought up during his presentation that
25 several different maps were submitted by Arbuckle

1 Aggregates. There were amended maps and the most
2 amended map is the most recent map, and the amended
3 map was amended in January of 2011 when the record
4 closed on the first informal conference. No other
5 maps have been submitted since that time.

6 Mr. Aamodt also raised the issue that there
7 were different maps submitted to different
8 governmental agencies, which is -- there were -- the
9 maps were the same and the variables, the -- the
10 variables on the map, like maybe one map had listed
11 a -- the scale house. Well, that wasn't a variable
12 that's considered in review by that particular
13 governmental agency regarding if a permit was needed
14 or not. And so they may not be -- they may have a
15 different type of legend, but it's the same
16 information. It's the same plan. It's the same --
17 exactly the same.

18 Arbuckle Aggregates intends to be a good
19 neighbor. We will obtain all necessary permits and we
20 will comply with the law and, in fact, our management
21 and monitoring plan has set forth that we will exceed
22 what is required of us. Not that this has any
23 particular bearing on whether Arbuckle Aggregates
24 receives its permit to mine, but the owners of
25 Arbuckle Aggregates hold in excess of 14,000 acres of

1 land in Oklahoma. They're not just living in Texas
2 and -- and coming up here. They're landowners in
3 Oklahoma and one of those has held 8,000 acres since
4 the land run in Oklahoma.

5 Again, I appreciate your time, I appreciate
6 your concerns, and thank you for this opportunity.

7 MR. SHOLAR: Arbuckle Aggregates, did
8 you have anybody else that wanted to speak or is Miss
9 Nichols the only one?

10 MS. NICHOLS: I'm it.

11 MR. SHOLAR: All right. All right.
12 That concludes our -- our speakers for this evening.
13 I do want to again reiterate how -- how this works.
14 Again, this is just an information gathering meeting.
15 We're here tonight to listen to you all and what your
16 concerns are in regards to Arbuckle Aggregates. We're
17 here to listen to them in regards to their permit and
18 how they plan to implement that permit. So no
19 decision is being made tonight. It is simply an
20 information gathering session.

21 My recommendation will be forwarded to the
22 deputy director of the Oklahoma Department of Mines
23 who will issue a notice of departmental decision.
24 Everyone who was a qualified objector in the December
25 2, 2010 informal conference and the October 4, 2011

1 informal conference that are qualified will receive a
2 copy of that notice of decision. If you are not a
3 qualified objector, you will still get notice through
4 the paper. It will be in the local paper, that --
5 that notice of decision will be. So in essence,
6 everyone will receive notice either through a direct
7 mailing or through -- or through the paper. You will
8 receive it in the mail if you -- like I said, if you
9 are a -- if you attended and signed in -- up for
10 either one of the conferences and you're qualified.

11 So just because somebody sent us a letter,
12 they're not -- at the first conference and didn't show
13 up to either one, they will not receive a letter.
14 They will get their notice in -- in -- in the
15 newspaper.

16 That concludes what we have -- have tonight.
17 We appreciate you all's time. It's these type of
18 sessions that help us make our decisions and thank you
19 -- thank you very much, and with -- with that, the --
20 this is -- we are adjourned and the record is -- is
21 closed.

22 (Proceedings adjourned at 8:21 p.m.)

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C E R T I F I C A T E

STATE OF OKLAHOMA)
)SS:
COUNTY OF OKLAHOMA)

I, Kate Scipione, a certified shorthand reporter within and for the State of Oklahoma, certify that the foregoing proceeding was taken by me in stenotype and thereafter transcribed by computer and is a true and correct transcript of the proceeding; that the proceeding was taken on October 4, 2011, at 6:36 p.m., at One Murray Campus, Fletcher Auditorium, Tishomingo, Oklahoma; that I am not an attorney for or a relative of either party, or otherwise interested in this action.

Witness my hand and seal of office on October 10, 2011.

KATE SCIPIONE, CSR
for the State of Oklahoma
CSR #1877